

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**DONNA LEE DAUGHERTY,
INDIVIDUALLY AND DONNA
LEE DAUGHERTY AS
ADMINISTRATRIX OF THE
ESTATE OF NORMAN EUGENE
DAUGHERTY JR., DECEASED**

Plaintiff,

v.

**YRC INC. AND YRC INC. D/B/A
YRC FREIGHT; AND LUIS
BURGOS,**

Defendant.

CIVIL ACTION FILE NO.

**REMOVED FROM SUPERIOR
COURT OF GWINNETT COUNTY
CIVIL ACTION FILE NO.
22-A-02616-4**

**DEFENDANT YRC, INC. AND YRC INC. D/B/A YRC FREIGHT'S
NOTICE OF REMOVAL**

TO: The Honorable Judges of the United States District Court for the Northern District of Georgia, Atlanta Division:

COMES NOW, YRC, INC. AND YRC INC. D/B/A YRC FREIGHT (hereinafter "Defendant YRC"), and files the following Notice of Removal to United States District Court, showing the Court as follows:

1. The subject civil action was filed on March 29, 2022, in the Superior Court of Gwinnett County, State of Georgia. That action is designated there as Civil Action File No.: 22-A-02616-4. Defendant first received notice of the suit on the day it was served, April 5, 2022. This removal is timely filed. Plaintiff alleges special damages in excess of \$383,634.30 and wrongful death damages. (*See* Plf.'s Comp., Ex. A, ¶¶ 54, 55).

2. Defendant files herewith a copy of all process, pleadings, and orders received by Defendant in Civil Action File No.: 22-A-02616-4, pursuant to 28 USC §1446, attached hereto as Exhibit "A".

3. Defendant YRC, is now, was at the commencement of Civil Action File No.: 22-A-02616-4, and at all times since has been an entity organized and existing under the laws of the State of Delaware.

4. Defendant YRC's Principal Office at the time of filing of Civil Action File No.: 22-A-02616-4 was, and at all times since has been located at 10990 Roe Avenue MS A515, Overland Park, Kansas.

5. Upon information and belief, Defendant Luis Burgos is a citizen of Colombia, and resides outside the State of Georgia or has departed from the state and cannot be found within the State of Georgia. (*See* Order Granting Motion for Service

by Publication, February 17, 2021, Judge Ronda Colvin Leary, State Court of Gwinnett County, attached hereto as Exhibit "B"). Mr. Burgos has not been personally served.

6. Upon information and belief, Plaintiff is an individual residing in the State of Georgia.

7. The action described above is a civil action with a claim of which this Court has original jurisdiction, and it is one that may be removed to this Court by the Defendant pursuant to the provisions of 28 USC §§ 1332 and 1441 et seq., in that there is complete diversity among the Parties, the Parties are not residents of the same State. Plaintiff alleges special damages in excess of \$383,634.30. Moreover, Plaintiff alleges wrongful death, loss of consortium, and pain and suffering. For all those reasons, the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

- a. Plaintiff alleges special damages in excess of \$383,634.30. (*See* Plf.'s Comp., Ex. A, ¶¶ 54, 55).
- b. "Amount in controversy" means simply the amount sought by Plaintiff that can be legally awarded by the fact-finder. "The jurisdictional fact in this case is not whether the damages are greater than the requisite amount, but whether a fact finder might legally conclude that they are: In other words, an amount that a plaintiff claims is not 'in controversy'

if no fact finder could legally award it." *Kopp v. Kopp*, 280 F.3d 883, 885 (8th Cir., 2002). "[T]he plaintiffs' likelihood of success on the merits is largely irrelevant to the court's jurisdiction because the pertinent question is what is in controversy in the case, not how much the plaintiffs are ultimately likely to recover." *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 751 (11th Cir., 2010). In a tort case the amount in controversy includes "general, special, and punitive damages." *Williams v. Best Buy Co.*, 269 F.3d 1316, 1320 (11th Cir., 2001).

8. Defendant attaches hereto a copy of the Summons and Complaint in Superior Court of Gwinnett County, State of Georgia, marked as Exhibit "A".

9. Defendant attaches hereto a copy of Defendants' Notice of Removal which has been sent for filing in the Superior Court of Gwinnett County, State of Georgia, marked as Exhibit "C".

10. All Defendants that have been properly served agree to this removal.

WHEREFORE the Defendant prays that the above action now pending against it in the Superior Court of Gwinnett County, State of Georgia, be removed to this Court.

Respectfully submitted this 5th day of May, 2022.

HALL BOOTH SMITH, P.C.

/s/ Mark Christopher

SCOTT H. MOULTON

Georgia State Bar No. 974237

SEAN B. COX

Georgia State Bar No. 664108

MARK D. CHRISTOPHER

Georgia State Bar No. 821387

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DEFENDANT DEMANDS

TRIAL BY JURY

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CERTIFICATE OF COMPLIANCE

The foregoing **DEFENDANT YRC, INC. AND YRC INC. D/B/A YRC
FREIGHT'S NOTICE OF REMOVAL** is double spaced in 14 point Times New
Roman font and complies with the type-volume limitation set forth in Local Rule
7.1.

Respectfully submitted this 5th day of May, 2022.

HALL BOOTH SMITH, P.C.

/s/ Mark Christopher

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CERTIFICATE OF SERVICE

I hereby certify that on this day I have served a copy of the within and foregoing **DEFENDANT YRC, INC. AND YRC INC. D/B/A YRC FREIGHT'S NOTICE OF REMOVAL** upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows and/or filing said document with the CM/ECF system which will automatically send electronic notification to the following:

Charles E. Dorr, P.C.
201 West Jefferson Street

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James E. Carter
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199 West Jefferson Street
Madison, Georgia 30650
jcarter@cartercromwell.com

Respectfully submitted this 5th day of May, 2022.

HALL BOOTH SMITH, P.C.

/s/ Mark Christopher

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